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In re Application of	:	
CHANG, Esther, H., et al.	:	DECISION ON PETITION
U.S. Application No.: 09/601,444	:	TO REVIVE ABANDONED
PCT No.: PCT/US98/24657	:	APPLICATION UNDER 37
International Filing Date: 19 November 1998	:	CFR 1.137(b)
Priority Date: 19 November 1997	:	
Attorney's Docket No.: 2444-101	:	
For: TARGETED LIPOSOME GENE DELIVERY	:	

This decision is issued in response to applicants' "Petition To Revive Unintentionally Abandoned Application Under 37 CFR 1.137(b)" filed on 02 August 2000. Applicants have paid the small entity petition fee.

BACKGROUND

On 19 November 1998, applicants filed international application PCT/US98/24657 which claimed a priority date of 19 November 1997 and which designated the United States.

On 18 June 1999, a Demand was filed with the International Preliminary Examining Authority electing the United States. The election was made prior to the expiration of nineteen months from the priority date. As a result, the deadline for submission of a copy of the international application (unless previously communicated by the International Bureau) and payment of the basic national fee was extended to expire thirty months from the priority date, i.e., 19 May 2000.

On 02 August 2000, applicants filed the Petition To Revive considered herein, with accompanying materials.

DISCUSSION

37 CFR 1.137(b) permits the filing of a petition to revive an abandoned application where the abandonment resulted from an unintentional delay. A grantable petition under this section must include: (1) the required reply, unless previously filed; (2) the petition fee required by law; (3) a statement that the "entire delay in filing the required reply from the due date for the reply

until the filing of a grantable petition pursuant to this paragraph was unintentional;" and (4) any terminal disclaimer and fee required pursuant to 37 CFR 1.137(c).

Regarding item (1), the "required reply," section 711.03(c) of the Manual of Patent Examining Procedures states that:

[g]enerally, the required reply is the reply sufficient to have avoided abandonment, had such reply been timely filed.

Here, a copy of the international application was not required because the international application was filed in the United States Receiving Office. The "required reply" was therefore payment of the basic national fee. The Petition To Revive filed on 02 August 2000 included an authorization to charge Deposit Account No. 02-2135 for the small entity basic national fee and was accompanied by a small entity statement. Thus, applicants have made a submission which would have been "sufficient to have avoided abandonment" had it been made in a timely manner, that is, on or before 19 May 2000. Accordingly, applicants have submitted the "required reply." Item (1) is satisfied.

Item (2) is the petition fee required under 37 CFR 1.17(m). The Petition To Revive provided authorization to charge Deposit Account No. 02-2135 \$605 for the small entity petition fee. Item (2) is satisfied.

As for item (3), the Petition For Revival expressly states that:

the entire delay in filing the necessary papers to begin the U.S. national stage of this PCT application until the lack of a U.S. national stage filing was noticed on 26 July 2000 was unintentional. On that date the process of preparing the necessary papers for prosecution of the U.S. national stage and the obtaining of necessary signatures was begun. The filing of this petition and the accompanying papers was accomplished as rapidly as possible following discovery on 26 July 2000 that the necessary papers for entering the U.S. national stage for this application had not been filed with the U.S. Patent and Trademark Office.

The statements in the Petition To Revive are construed as being the statement required by 37 CFR 1.137(b)(3), that is, a statement that the "entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to this paragraph was unintentional." Applicants **must** notify this Office if this is **not** a correct interpretation. Based on this interpretation, item (3) under 37 CFR 1.137(b) is satisfied.

Under the terms of 37 CFR 1.137(c), the terminal disclaimer listed as item (4) above is not required for this application. Applicants have therefore satisfied all the requirements for a grantable petition under 37 CFR 1.137(b). The Petition To Revive is granted.

The Petition To Revive was also accompanied by an executed declaration. However, review of this declaration reveals that it is not in compliance with 37 CFR 1.497(a) and (b). Specifically, the first two pages of the declaration are an original document, while the third page is a copy. Accordingly, the first two original pages could not have been attached to the signature page at the time of execution, and therefore, execution is not proper. In addition, the third page of the declaration is illegible (note, e.g., the second inventor's typewritten name)

CONCLUSION

Applicants' Petition To Revive is **GRANTED**.

The application has an international filing date of 19 November 1998 under 35 U.S.C. 363 and a date of 02 August 2000 under 35 U.S.C. 371(c) and 102(e).

This application is being forwarded to the National Stage Processing Branch of the International Division for further processing in accord with this decision including mailing of a Notification Of Missing Requirements (Form PCT/DO/EO/905) requiring a properly executed oath or declaration.



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